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HOUSE BILL 3264

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Loomis, Ormsby, Liias, and Wood

Read first time 01/28/08. Referred to Committee on Capital Budget.

1            AN ACT Relating to public works projects; amending RCW 43.155.010,  
2 43.155.020, 43.155.050, 43.155.050, 43.155.060, 43.155.065, and  
3 43.155.068; reenacting and amending RCW 43.155.070; providing effective  
4 dates; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 43.155.010 and 1996 c 168 s 1 are each amended to read  
7 as follows:

8            (~~The legislature finds that there exists in the state of~~  
9 ~~Washington over four billion dollars worth of critical projects for the~~  
10 ~~planning, acquisition, construction, repair, replacement,~~  
11 ~~rehabilitation, or improvement of streets and roads, bridges, water~~  
12 ~~systems, and storm and sanitary sewage systems. The December, 1983~~  
13 ~~Washington state public works report prepared by the planning and~~  
14 ~~community affairs agency documented that local governments expect to be~~  
15 ~~capable of financing over two billion dollars worth of the costs of~~  
16 ~~those critical projects but will not be able to fund nearly half of the~~  
17 ~~documented needs.~~

18            ~~The legislature further finds that Washington's local governments~~

1 ~~have unmet financial needs for solid waste disposal, including~~  
2 ~~recycling, and encourages the board to make an equitable geographic~~  
3 ~~distribution of the funds.))~~

4 It is the policy of the state of Washington to encourage self-  
5 reliance by local governments in meeting their public works needs and  
6 to assist in the financing of critical public works projects (~~by~~  
7 ~~making loans, financing guarantees, and technical assistance available~~  
8 ~~to local governments for these projects~~) when those projects also  
9 achieve state policy goals.

10 **Sec. 2.** RCW 43.155.020 and 2001 c 131 s 1 are each amended to read  
11 as follows:

12 (~~Unless the context clearly requires otherwise,~~) The definitions  
13 in this section shall apply throughout this chapter unless the context  
14 clearly requires otherwise.

15 (1) "Board" means the public works board created in RCW 43.155.030.

16 (2) "Capital facility plan" means a capital facility plan required  
17 by the growth management act under chapter 36.70A RCW or, for local  
18 governments not fully planning under the growth management act, a plan  
19 required by the public works board.

20 (3) "Department" means the department of community, trade, and  
21 economic development.

22 (4) (~~"Financing guarantees" means the pledge of money in the~~  
23 ~~public works assistance account, or money to be received by the public~~  
24 ~~works assistance account, to the repayment of all or a portion of the~~  
25 ~~principal of or interest on obligations issued by local governments to~~  
26 ~~finance public works projects.~~

27 ~~(5))~~ (5) "Local governments" means cities, towns, counties, special  
28 purpose districts, and any other municipal corporations or quasi-  
29 municipal corporations in the state excluding school districts and port  
30 districts.

31 ~~((6))~~ (5) "Public works project" means a project of a local  
32 government for the planning, acquisition, construction, repair,  
33 reconstruction, replacement, rehabilitation, or improvement of streets  
34 and roads, bridges, water systems, or storm and sanitary sewage systems  
35 (~~and~~), solid waste facilities, including recycling facilities, and  
36 other categories of local infrastructure projects as specified in the  
37 capital budget appropriations act. A planning project may include the

1 compilation of biological, hydrological, or other data on a county,  
2 drainage basin, or region necessary to develop a base of information  
3 for a capital facility plan.

4 ~~((+7))~~ (6) "Solid waste or recycling project" means remedial  
5 actions necessary to bring abandoned or closed landfills into  
6 compliance with regulatory requirements and the repair, restoration,  
7 and replacement of existing solid waste transfer, recycling facilities,  
8 and landfill projects limited to the opening of landfill cells that are  
9 in existing and permitted landfills.

10 ~~((+8))~~ (7) "Technical assistance" means training and other  
11 services provided to local governments to: (a) Help such local  
12 governments plan, apply, and qualify for loans ~~((and financing~~  
13 ~~guarantees))~~ from the board, and (b) help local governments improve  
14 their ability to plan for, finance, acquire, construct, repair,  
15 replace, rehabilitate, and maintain public facilities.

16 **Sec. 3.** RCW 43.155.050 and 2007 c 520 s 6036 are each amended to  
17 read as follows:

18 (1) The public works assistance account is hereby established in  
19 the state treasury. Money may be placed in the public works assistance  
20 account from the proceeds of bonds when authorized by the legislature  
21 or from any other lawful source. Money in the public works assistance  
22 account shall be used to make loans ~~((and to give financial~~  
23 ~~guarantees))~~ to local governments for public works projects, within  
24 categories and according to state policy priorities specified in the  
25 capital budget appropriations act. In specifying the infrastructure  
26 categories and state policy priorities, the legislature may not specify  
27 funding for individual projects to individual jurisdictions. Moneys in  
28 the account may also be appropriated to provide for state match  
29 requirements under federal law for projects and activities conducted  
30 and financed by the board under the drinking water assistance account.  
31 ~~((Not more than fifteen percent of the biennial capital budget~~  
32 ~~appropriation to the public works board from this account may be~~  
33 ~~expended or obligated for preconstruction loans, emergency loans, or~~  
34 ~~loans for capital facility planning under this chapter; of this amount,~~  
35 ~~not more than ten percent of the biennial capital budget appropriation~~  
36 ~~may be expended for emergency loans and not more than one percent of~~  
37 ~~the biennial capital budget appropriation may be expended for capital~~

1 ~~facility planning loans.~~) For the 2007-2009 biennium, moneys in the  
2 account may be used for grants for projects identified in section 138,  
3 chapter 488, Laws of 2005.

4 (2) The job development fund is hereby established in the state  
5 treasury. Up to fifty million dollars each biennium from the public  
6 works assistance account may be transferred into the job development  
7 fund. Money in the job development fund may be used solely for job  
8 development fund program grants, administrative expenses related to the  
9 administration of the job development fund program created in RCW  
10 43.160.230, and for the report prepared by the joint legislative audit  
11 and review committee pursuant to RCW 44.28.801(2). Moneys in the job  
12 development fund may be spent only after appropriation. The board  
13 shall prepare a prioritized list of proposed projects of up to fifty  
14 million dollars as part of the department's 2007-09 biennial budget  
15 request. The board may provide an additional alternate job development  
16 fund project list of up to ten million dollars. The legislature may  
17 remove projects from the list recommended by the board. The  
18 legislature may not change the prioritization of projects recommended  
19 for funding by the board, but may add projects from the alternate list  
20 in order of priority, as long as the total funding does not exceed  
21 fifty million dollars.

22 **Sec. 4.** RCW 43.155.050 and 2007 c 520 s 6037 are each amended to  
23 read as follows:

24 The public works assistance account is hereby established in the  
25 state treasury. Money may be placed in the public works assistance  
26 account from the proceeds of bonds when authorized by the legislature  
27 or from any other lawful source. Money in the public works assistance  
28 account shall be used to make loans ~~((and to give financial~~  
29 ~~guarantees))~~ to local governments for public works projects, within  
30 categories and according to state policy priorities specified in the  
31 capital budget appropriations act. In specifying the infrastructure  
32 categories and state policy priorities, the legislature may not specify  
33 funding for individual projects to individual jurisdictions. Moneys in  
34 the account may also be appropriated to provide for state match  
35 requirements under federal law for projects and activities conducted  
36 and financed by the board under the drinking water assistance account.  
37 ~~((Not more than fifteen percent of the biennial capital budget~~

1 ~~appropriation to the public works board from this account may be~~  
2 ~~expended or obligated for preconstruction loans, emergency loans, or~~  
3 ~~loans for capital facility planning under this chapter; of this amount,~~  
4 ~~not more than ten percent of the biennial capital budget appropriation~~  
5 ~~may be expended for emergency loans and not more than one percent of~~  
6 ~~the biennial capital budget appropriation may be expended for capital~~  
7 ~~facility planning loans.)) For the 2007-2009 biennium, moneys in the~~  
8 account may be used for grants for projects identified in section 138,  
9 chapter 488, Laws of 2005 and section 1033, chapter 520, Laws of 2007.

10 **Sec. 5.** RCW 43.155.060 and 1988 c 93 s 2 are each amended to read  
11 as follows:

12 In order to aid the financing of public works projects, the board  
13 may:

14 (1) Make low-interest or interest-free loans to local governments  
15 from the public works assistance account or other funds and accounts  
16 for the purpose of assisting local governments in financing public  
17 works projects. The board may require such terms and conditions and  
18 may charge such rates of interest on its loans consistent with the  
19 categories and priorities specified in the capital budget  
20 appropriations act and as it deems necessary or convenient to carry out  
21 the purposes of this chapter. Money received from local governments in  
22 repayment of loans made under this section shall be paid into the  
23 public works assistance account for uses consistent with this chapter.  
24 The board may not authorize loans in excess of the projected balance in  
25 the account taking into consideration the expected pace of draws  
26 against authorized loans and the anticipated amount of loan repayments.  
27 If the total amount of the appropriation from the account exceeds the  
28 projected available funds, the board shall reduce allocations from the  
29 various categories in the capital budget by an equal percentage.

30 (2) ~~((Pledge money in the public works assistance account, or money~~  
31 ~~to be received by the public works assistance account, to the repayment~~  
32 ~~of all or a portion of the principal of or interest on obligations~~  
33 ~~issued by local governments to finance public works projects. The~~  
34 ~~board shall not pledge any amount greater than the sum of money in the~~  
35 ~~public works assistance account plus money to be received from the~~  
36 ~~payment of the debt service on loans made from that account, nor shall~~

1 ~~the board pledge the faith and credit or the taxing power of the state~~  
2 ~~or any agency or subdivision thereof to the repayment of obligations~~  
3 ~~issued by any local government.~~

4 (3)) Create such subaccounts in the public works assistance  
5 account as the board deems necessary to carry out the purposes of this  
6 chapter.

7 ((4)) (3) Provide a method for the allocation of loans (~~and~~  
8 ~~financing guarantees~~) consistent with the categories and priorities  
9 specified in the capital budget appropriations act and the provision of  
10 technical assistance under this chapter.

11 All local public works projects aided in whole or in part under the  
12 provisions of this chapter shall be put out for competitive bids,  
13 except for emergency public works under RCW 43.155.065 for which the  
14 recipient jurisdiction shall comply with this requirement to the extent  
15 feasible and practicable. The competitive bids called for shall be  
16 administered in the same manner as all other public works projects put  
17 out for competitive bidding by the local governmental entity aided  
18 under this chapter.

19 **Sec. 6.** RCW 43.155.065 and 2001 c 131 s 3 are each amended to read  
20 as follows:

21 Consistent with the categories and priorities specified in the  
22 capital budget appropriations act, the board may make low-interest or  
23 interest-free loans to local governments for emergency public works  
24 projects. Emergency public works projects shall include the  
25 construction, repair, reconstruction, replacement, rehabilitation, or  
26 improvement of a public water system that is in violation of health and  
27 safety standards and is being operated by a local government on a  
28 temporary basis. The loans may be used to help fund all or part of an  
29 emergency public works project less any reimbursement from any of the  
30 following sources: (1) Federal disaster or emergency funds, including  
31 funds from the federal emergency management agency; (2) state disaster  
32 or emergency funds; (3) insurance settlements; or (4) litigation.

33 **Sec. 7.** RCW 43.155.068 and 2001 c 131 s 4 are each amended to read  
34 as follows:

35 (1) Consistent with the categories and priorities specified in the  
36 capital budget appropriations act, the board may make low-interest or

1 interest-free loans to local governments for preconstruction activities  
2 on public works projects (~~before the legislature approves the~~  
3 ~~construction phase of the project~~). Preconstruction activities  
4 include design, engineering, bid-document preparation, environmental  
5 studies, right-of-way acquisition, and other preliminary phases of  
6 public works projects as determined by the board. The purpose of the  
7 loans authorized in this section is to accelerate the completion of  
8 public works projects by allowing preconstruction activities to be  
9 performed before the approval of the construction phase of the project  
10 by the legislature.

11 (2) Projects receiving loans for preconstruction activities under  
12 this section must be evaluated using the priority process and factors  
13 in RCW 43.155.070(~~(+2)~~) (4). The receipt of a loan for  
14 preconstruction activities does not ensure the receipt of a  
15 construction loan for the project under this chapter. (~~Construction~~  
16 ~~loans for projects receiving a loan for preconstruction activities~~  
17 ~~under this section are subject to legislative approval under RCW~~  
18 ~~43.155.070 (4) and (5).~~) The board shall adopt a single application  
19 process for local governments seeking both a loan for preconstruction  
20 activities under this section and a construction loan for the project.

21 **Sec. 8.** RCW 43.155.070 and 2007 c 341 s 24 and 2007 c 231 s 2 are  
22 each reenacted and amended to read as follows:

23 (1) To qualify for loans or pledges under this chapter the board  
24 must determine that a local government meets all of the following  
25 conditions:

26 (a) The city or county must be imposing a tax under chapter 82.46  
27 RCW at a rate of at least one-quarter of one percent; and

28 (b) The local government must have developed a capital facility  
29 plan(~~; and~~

30 ~~(c) The local government must be using all local revenue sources~~  
31 ~~which are reasonably available for funding public works, taking into~~  
32 ~~consideration local employment and economic factors)).~~

33 (2) Except where necessary to address a public health need or  
34 substantial environmental degradation, a county, city, or town planning  
35 under RCW 36.70A.040 must have adopted a comprehensive plan, including  
36 a capital facilities plan element, and development regulations as  
37 required by RCW 36.70A.040. This subsection does not require any

1 county, city, or town planning under RCW 36.70A.040 to adopt a  
2 comprehensive plan or development regulations before requesting or  
3 receiving a loan or loan guarantee under this chapter if such request  
4 is made before the expiration of the time periods specified in RCW  
5 36.70A.040. A county, city, or town planning under RCW 36.70A.040  
6 which has not adopted a comprehensive plan and development regulations  
7 within the time periods specified in RCW 36.70A.040 is not prohibited  
8 from receiving a loan or loan guarantee under this chapter if the  
9 comprehensive plan and development regulations are adopted as required  
10 by RCW 36.70A.040 before submitting a request for a loan (~~or loan~~  
11 ~~guarantee~~)).

12 (3) In considering awarding loans for public facilities to special  
13 districts requesting funding for a proposed facility located in a  
14 county, city, or town planning under RCW 36.70A.040, the board shall  
15 consider whether the county, city, or town planning under RCW  
16 36.70A.040 in whose planning jurisdiction the proposed facility is  
17 located has adopted a comprehensive plan and development regulations as  
18 required by RCW 36.70A.040.

19 (4) Consistent with the categories and priorities specified in the  
20 capital budget appropriations act, the board shall develop a priority  
21 process for public works projects as provided in this section. The  
22 intent of the priority process is to maximize the (~~value of public~~  
23 ~~works projects~~) achievement of state policy goals accomplished with  
24 assistance under this chapter. The board shall attempt to assure a  
25 geographical balance in assigning priorities to projects. In addition  
26 to the policy goals and priorities specified in the capital budget  
27 appropriations act, the board shall consider at least the following  
28 factors in assigning a priority to a project:

29 (a) Whether the local government receiving assistance has  
30 experienced severe fiscal distress resulting from natural disaster or  
31 emergency public works needs;

32 (b) Except as otherwise conditioned by RCW 43.155.110, whether the  
33 entity receiving assistance is a Puget Sound partner, as defined in RCW  
34 90.71.010;

35 (c) Whether the project is referenced in the action agenda  
36 developed by the Puget Sound partnership under RCW 90.71.310;

37 (d) Whether the project is critical in nature and would affect the  
38 health and safety of a great number of citizens;

1 (e) Whether the applicant has developed and adhered to guidelines  
2 regarding its permitting process for those applying for development  
3 permits consistent with section 1(2), chapter 231, Laws of 2007;

4 (f) The cost of the project compared to the (~~size of the local~~  
5 ~~government and amount of loan money available~~) fiscal capacity of the  
6 local government, including whether there remains unused local taxing  
7 authority and how the applicant's utility rates as a percent of median  
8 household income compare to similar measures for the state and  
9 comparable regions. The cost of the project must include all phases  
10 for which the local government anticipates seeking state assistance;

11 (g) The number of communities served by or funding the project;

12 (h) Whether the project is located in an area of high unemployment,  
13 compared to the average state unemployment;

14 (i) Whether the project is the acquisition, expansion, improvement,  
15 or renovation by a local government of a public water system that is in  
16 violation of health and safety standards, including the cost of  
17 extending existing service to such a system;

18 (j) The relative benefit of the project to the community,  
19 considering the present level of economic activity in the community and  
20 the existing local capacity to increase local economic activity in  
21 communities that have low economic growth; and

22 (k) Other criteria that the board considers advisable.

23 (5) Existing debt or financial obligations of local governments  
24 shall not be refinanced under this chapter. Each local government  
25 applicant shall provide documentation of attempts to secure additional  
26 local or other sources of funding for each public works project for  
27 which financial assistance is sought under this chapter.

28 (6) Before November 1st of each year, the board shall develop and  
29 submit to the appropriate fiscal committees of the senate and house of  
30 representatives a (~~description of the loans made under RCW 43.155.065,~~  
31 ~~43.155.068, and subsection (9) of this section during the preceding~~  
32 ~~fiscal year and a prioritized list of projects which are recommended~~  
33 ~~for funding by the legislature, including one copy to the staff of each~~  
34 ~~of the committees. The list shall include, but not be limited to, a~~  
35 ~~description of each project and recommended financing, the terms and~~  
36 ~~conditions of the loan or financial guarantee, the local government~~  
37 ~~jurisdiction and unemployment rate, demonstration of the jurisdiction's~~  
38 ~~critical need for the project and documentation of local funds being~~

1 used to finance the public works project. The list shall also include  
2 measures of fiscal capacity for each jurisdiction recommended for  
3 financial assistance, compared to authorized limits and state averages,  
4 including local government sales taxes; real estate excise taxes;  
5 property taxes; and charges for or taxes on sewerage, water, garbage,  
6 and other utilities.

7 ~~(7) The board shall not sign contracts or otherwise financially~~  
8 ~~obligate funds from the public works assistance account before the~~  
9 ~~legislature has appropriated funds for a specific list of public works~~  
10 ~~projects. The legislature may remove projects from the list~~  
11 ~~recommended by the board. The legislature shall not change the order~~  
12 ~~of the priorities recommended for funding by the board.~~

13 ~~(8) Subsection (7) of this section does not apply to loans made~~  
14 ~~under RCW 43.155.065, 43.155.068, and subsection (9) of this section.~~

15 ~~(9) Loans made for the purpose of capital facilities plans shall be~~  
16 ~~exempted from subsection (7) of this section.~~

17 ~~(10))~~ report describing the financial assistance provided in the  
18 prior fiscal year, and a status report on all uncompleted projects.  
19 The report of projects receiving assistance in the prior fiscal year  
20 must include a description of the scoring used to prioritize the  
21 applications for assistance within the categories and priorities  
22 specified in the capital budget appropriations act and other factors  
23 considered by the board. The report must specify all state funding and  
24 the terms of that assistance provided for the project by the department  
25 and other state agencies in the current and prior biennia. The status  
26 report of all uncompleted projects must describe the percentage of the  
27 project that is complete, the percentage of total state funding from  
28 all sources that has been disbursed to the project, a brief description  
29 of reasons for any significant delays in the project plan, and  
30 significant changes in the project budget and the level of state  
31 funding authorized.

32 (7) To qualify for loans or pledges for solid waste or recycling  
33 facilities under this chapter, a city or county must demonstrate that  
34 the solid waste or recycling facility is consistent with and necessary  
35 to implement the comprehensive solid waste management plan adopted by  
36 the city or county under chapter 70.95 RCW.

37 ~~((11))~~ (8) After January 1, 2010, any project designed to address  
38 the effects of storm water or wastewater on Puget Sound may be funded

1 under this section only if the project is not in conflict with the  
2 action agenda developed by the Puget Sound partnership under RCW  
3 90.71.310.

4 NEW SECTION. **Sec. 9.** Section 3 of this act expires June 30, 2011.

5 NEW SECTION. **Sec. 10.** Section 4 of this act takes effect June 30,  
6 2011.

7 NEW SECTION. **Sec. 11.** Sections 1 through 3 and 5 through 8 of  
8 this act take effect July 1, 2009.

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